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Portugal/Turkey: New Tax Treaty Enters Into Force

On December 18, 2006, a new income tax treaty and accompanying protocol ("treaty"), signed on May 11, 2005, between the governments of Portugal and Turkey entered into force. This is the first income tax treaty concluded between the two countries and its provisions will have effect, in respect of withholding taxes, to income derived from January 1, 2007. The text of the new treaty and protocol can be viewed on the Portuguese Ministry of Finance website (the English version can be found on page 14, after the Portuguese version).

Please note that for *Global Withholding Tax Reporter (GWTR)* purposes, Turkey is covered as a country of investment only.

The terms "Contracting State" and "the other Contracting State" as used below, refer generally to Portugal or Turkey, as the case may be.

For *GWTR* purposes, the salient points of the protocol are:

Definition of Resident: Article 4 of the treaty defines the term "resident" to mean "any

person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office, place of management or any other criterion of a similar nature.” The term also includes “that State and any political or administrative subdivision or local authority thereof.” However, the term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

Article 3 of the treaty states that the term “person” includes “an individual, a company and any other body of persons.” The term “company” refers to “any body corporate or any entity that is treated as a body corporate for tax purposes.”

Dividends: Article 10 of the treaty provides a general withholding tax rate of 15% provided the income recipient is the beneficial owner. The rate is reduced to 5% if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends for an uninterrupted period of two years prior to the payment; or, if the company paying the dividends has existed for less than two years, during the lifetime of the company.

[Please refer to footnote (a), Turkey Statutory Rates, in the *GWTR*, for additional details regarding the taxation of dividends.]

Interest: Article 11 of the treaty provides a general withholding tax rate of 15% provided the income recipient is the beneficial owner. A reduced rate of 10% applies to interest paid on a loan made for a period of more than of 2 years. Article 11(3) of the treaty provides an exemption from tax if the interest is paid to:

(a) The Central Bank of Turkey
(b) The Central Bank of Portugal
(c) The Government, the political or administrative subdivisions or the local authorities of either Contracting State

[Please refer to footnotes (b) through (d), Turkey Statutory Rates, in the *GWTR*, for additional details regarding the taxation of interest income.]

Capital Gains: Article 13 of the treaty provides that gains from the alienation of portfolio investments are generally taxable only in the Contracting State of which the seller is resident (i.e., no tax is levied in the country of investment). However, income derived from the alienation of shares that represent 25% of the capital stock of a company and is held for a period that does not exceed one year, will be subject to domestic law taxation in that country (i.e., taxable in the country of investment).

[Please refer to footnotes (h) and (j), Turkey Statutory Rates, in the *GWTR*, for more information on the taxation of Capital Gains.]

Updates to the *GWTR* Turkey/Portugal Treaty Matrix are currently in process.

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